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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,908	06/25/2003	Robin Birns	47322-0003	4360
20822	7590	12/02/2004	EXAMINER	
RUDEN, MCCLOSKY, SMITH, SCHUSTER & RUSSELL, P.A.			PATEL, TAJASH D	
P.O. BOX 1900			ART UNIT	PAPER NUMBER
FORT LAUDERDALE, FL 33301			3765	

DATE MAILED: 12/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/603,908	BIRNS, ROBIN	
	Examiner Tejash D Patel	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 August 2004.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-12 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>5/18/04</u> .	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 5-9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neviaser et al. (US 5,347,669) in view of McGrath-Saleh (US 4,802,244).

Neviaser et al. (hereinafter Neviaser) discloses an infant support device including an adjustable strap member (11) with a plurality of movement restrictors (3, 4) being attached thereto by hook and loop fasteners (18,20), col. 4, lines 31-53 and as shown in figure 2. However, Neviaser does not show the infant being positioned on its back between the movement restrictors.

McGrath-Saleh discloses an infant sleep support device including a clothing article (19) with first and second hook and loop attachment members (47,47') on an exterior thereof that are opposite one another. Further, first and second movement restrictors (18a, 18b) includes third and fourth hook and loop attachment members (27, 28) respectively which attaches to first and second attachment members, respectively. Further, the infant is positioned between the

movement restrictors as shown in figure 2.

It would have been obvious to one skilled in the art at the time the invention was made to recognize that the infant can be positioned on its back between the restrictors of Neviaser as taught by McGrath-Saleh as required for a particular application or end use thereof.

With regard to claims 3, 7 and 9 it would have been obvious to one skilled in the art to recognize that the hook and loop fasteners of Neviaser when viewed with McGrath-Saleh can be substituted with snaps, etc since such attachment/fastening means is considered equivalent in the art.

3. Claim 4, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neviaser in view of McGrath-Saleh and Wilkinson (US 6,721,974). Neviaser discloses the invention as set forth above except for showing the plurality of restrictors being inflatable.

Wilkinson discloses a sleep support device that is inflatable, col. 3, lines 3-60.

It would have been obvious to one skilled in the art at the time the invention was made to form the plurality of restrictors of Neviaser when viewed with McGrath-Saleh to be inflatable as taught by Wilkinson as an alternative but equivalent means of cushioning the infant in position while sleeping on its back.

***Response to Amendment***

4. The amendment and arguments filed on August 24, 2004 have been considered. In view of such the amendment has necessitated this office action to be made FINAL and the arguments are moot. (see action above).

***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tejash Patel whose telephone number is (571) 272-4993. The fax phone number for this group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

November 22, 2004



**TEJASH PATEL  
PRIMARY EXAMINER**